

FRASCELLA & PISAURO, LLC.

ATTORNEYS AT LAW

# STARTING AND RUNNING YOUR OWN BUSINESS

LEGAL AND ACCOUNTING ISSUES FOR  
YOUR BUSINESS

6/16/09

# PLANNING YOUR NEW BUSINESS

- Business Plan
  - Many important aspects of a business plan
    - Financial
    - Product/Service
    - Customer base
  - Goals for the next 6 months, 1 and 5 years.
  - What is the lifetime goal of the business
    - Give the business to your children
    - Take public



# PLANNING YOUR NEW BUSINESS

- Company Name
  - Is it available in NJ
  - Is it available in other states
  - Is it an available domain name.
    - Get your own domain name
  - Is the name confusing with another company name
  - Is the name trademarked?

# Choice of Entity

- Sole Proprietorship
- Partnership
  - General Partnership
  - Limited Partnership
- Corporation
  - “C” Corp
  - “S” Corp
- Limited Liability Companies



# LLCs and Corporations

- Benefits
  - Can limit your personal liability
  - Can have perpetual lifespan
  - Has its own tax id number
  - May be seen as more professional/stable
- Cons
  - Record keeping requirements
  - Cannot be your alter ego

# Operating Documents

- Bylaws and Shareholders agreement for Corporations.
  - Operating Agreement for LLCs.
  - Partnership Agreement for Partnerships
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- Operating Documents should be in place before business formed and start to run.



# Considerations for Operating Documents

- Is the interest in the company freely transferable?
- What happens when an owner dies?
  - Can the interest go to the estate/heirs?
  - Does the remaining owners want this?
  - Should there be insurance on key owners?
- Are they going to be active and passive owners?

# More Considerations for Operating Documents

- How are profits and losses going to be divided
  - According to ownership interest
  - According to work brought in
  - Per capital
  - Etc?
- When and how many meetings for the owners? Managers?
- Quorum and voting rules



# Operating Documents for LLC & Partnerships

- For LLCs and Partnerships
  - Which if any of the members can bind the company?
  - Default rules are that any partner, member can bind the company.

# So you are going to have employees

- How to find employees?
- Once you find them how to do interview them?
- Written or oral offer?
- Written or oral contract?



# Employees

- Employees are usually “at will”
  - Unless: Contract, handbook, practice indicates otherwise
- Payroll
  - Salaried/hourly
  - Overtime for non-exempt employees
- Make sure employees play nicely with each other.

# Employees

- Should have an employee handbook
  - Many important issues but some to consider
    - Deals with internet/computer usage
      - Monitoring of email.
      - Expectation of privacy
      - Non-work related usage
      - Afterhours usage (overtime issues)
    - Harassment/discrimination policy
    - Identity Theft
    - Time off/vacation/personal day policy



# Contracts

- Do you need a contract with your customer?
- Some industries are required to have contracts.
  - Lawyers
  - Home Improvement contractors
- What are the terms of the contract

# Contracts

Contracts set out the obligations of all parties

- What happens when someone breaches
- Where can you sue and if you can sue
- Can you get interest and attorney fees?
- What State's laws apply to the parties?
- What do the parties expect and when do they expect it.

# Important Laws



- NJ Identity Theft Prevention Act.
- Federal Family and Medical Leave Act
- NJ Family Leave Act
- Contractor's Registration Act.
- Laws dealing with gift cards
- NJ Law Against Discrimination
- And many more

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Michael Pisauro is one of the founding members of Frascella & Pisauro, LLC. Part of my practice focuses on representing small and medium sized business in most of their every day business needs. I am and have been the vice president of the Pennington Business & Professional Association. I also handle environmental, land use, real estate and litigation matters. I write about aspects of New Jersey law impacting NJ business. My blog can be found at [www.njbusinesswise.com](http://www.njbusinesswise.com).

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